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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/071,977      | 02/06/2002  | Simon K.C. Yung      | M-11154-3C US       | 3021             |

7590 10/28/2003

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| EXAMINER |
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BECKER, DREW E

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| ART UNIT | PAPER NUMBER |
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1761

DATE MAILED: 10/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/071,977             | YUNG, SIMON K.C.    |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Drew E Becker          | 1761                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 24-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☒ The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other:  |

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election with traverse of claims 1-23 in Paper No. 0903 is acknowledged. The traversal is on the ground(s) that the examiner did not cite an example of a material difference between the apparatus and process groups. This is not found persuasive because the material difference is the lack of a baking pan in the process group, and an example would be an oven which does not require the use of a pan as properly explained in the restriction requirement of May 30, 2003.

The requirement is still deemed proper and is therefore made FINAL.

***Oath/Declaration***

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

3. This application presents a claim for subject matter not originally claimed or embraced in the parent application 09/484,386. A new oath or declaration is required under 37 CFR 1.67. The new oath or declaration must properly identify the application of which it is to form a part, preferably by application number and filing date in the body of the oath or declaration. See MPEP §§ 602.01 and 602.02. Specifically, the oath does not disclose that this application is a CIP of 09/484,386.

### ***Double Patenting***

4. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

5. Claims 2 and 18 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1 and 27 of prior U.S. Patent No. 6,035,763. This is a double patenting rejection.

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1-23 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-31 of U.S. Patent No.

6,035,763. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to include an ultrasonic transducer in view of JP 405068464A.

***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 20-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

10. Claim 20 recites the limitation "said main heater". There is insufficient antecedent basis for this limitation in the claim. In addition, it is not clear which heater is being referred to.

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical

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Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000.

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

12. Claims 1-5, 7-11, and 13-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Sham [Pat. No. 5,735,190].

Sham teaches a breadmaker comprising a housing forming a baking chamber (Figure 1, #12), a baking pan (Figure 4, #49), a temperature sensor (Figure 10, #52), a humidity sensor (Figure 10, #53), a first heating ribbon (Figure 10, #18), a humidifier including an evaporator tank, a water reservoir, and water valve (Figure 10, #45 & 22; column 3, line 53), a stirrer blade (Figure 4, #29), an openable cover forming a vent hole (Figure 7, #14), an exhaust fan (column 3, line 49; Figure 10, #56), and a programmable microprocessor controller connected to the humidity sensor, temperature sensor, heater, humidifier, and exhaust fan (Figure 10, #51).

### ***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sham as applied above, in view of Robertson [Pat. No. 4,510,854].

Sham teaches the above mentioned components. Sham also teaches a humidity sensor (Figure 10, #53), an openable cover forming a vent hole (Figure 7, #14), an exhaust fan (column 3, line 49; Figure 10, #56), and a programmable microprocessor controller connected to the humidity sensor, temperature sensor, heater, humidifier, and exhaust fan (Figure 10, #51). Sham does not teach a vent hole responsive to the humidity level sensor. Robertson teaches an oven comprising an electrically operated exhaust vent which can be opened and closed (Figure 3, #102). It would have been obvious to one of ordinary skill in the art to incorporate the electrically operated vent of Robertson into the invention of Sham since both are directed to humidified ovens, since Sham already included an openable cover forming a vent hole as well as an exhaust fan responsive to the humidity sensor (Figure 7, #14; Figure 10, #53 & 56; column 3, lines 44-50), and since the electrically operated exhaust vent of Robertson would have effectively provided the vent hole required by Sham (column 3, lines 44-50) without the need to manually open the cover and thereby risk injury to the operator.

15. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sham as applied above, in view of JP 405068464A.

Sham teaches the above mentioned components. Sham does not teach an ultrasonic transducer. JP 405068464A teaches a bread humidifying device comprising an ultrasonic transducer (abstract). It would have been obvious to one of ordinary skill in the art to incorporate the ultrasonic transducer of JP 405068464A into the invention of Sham since both are directed to bread humidifying devices, since Sham already included a humidifier (Figure 10, #45), and since the ultrasonic transducer of JP

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405068464A would have permitted the use of moisture within the oven of Sham without the need for heating the water, thereby permitting it to be used for proofing as well as baking.

16. Claims 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sham as applied above, in view of Shelton [Pat. No. 5,494,690].

Sham teaches the above mentioned components. Sham also teaches air circulation means which is responsive to the humidity and temperature sensors (Figures 5 & 10, #54 & 56; column 3, lines 24-28). Sham does not teach a second heater. Shelton teaches an oven comprising a first air heater (Figure 2, #4) as well as a second water heater (Figure 2, #42). It would have been obvious to one of ordinary skill in the art to incorporate the second heater of Shelton into the invention of Sham since both are directed to humidified ovens, since Sham already included a first heater as well as a humidifier (Figure 10, #18 & 45), and since the second heater of Shelton would have provided the ability to separately heat the air and water, and thus provide greater flexibility in the heating/humidifying operation.

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Dowds [Pat. No. 4,635,540], Arao et al [Pat. No. 4,951,559], Chaudoir [Pat. No. 5,365,039], Hirota et al [Pat. No. 4,762,057], Yung [Pat. No. 6,347,578], Hofer [Pat. No. 6,497,907], and Koether et al [Pat. No. 4,920,948] teach baking ovens with temperature and humidity controls.



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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 703-305-0300. The examiner can normally be reached on Monday-Thursday 8am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1495.



Drew E Becker  
Examiner  
Art Unit 1761

10-16-03